



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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www.deq.virginia.gov

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT

**ISSUED TO
RWG5 LLC**

FOR

DISPOSAL & RECYCLING SERVICES OF LUNENBURG

Solid Waste Permit No. SWP544

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and RWG5 LLC, regarding Disposal & Recycling Services of Lunenburg, for the purpose of resolving violations of the Virginia Waste Management Act and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" or "Landfill" means Disposal & Recycling Services of Lunenburg, located at 45 Landfill Road, State Route 659, in Lunenburg, Virginia, which is owned and operated by RWG5 LLC, a subsidiary of Container First Services.
6. "RWG5" means RWG5 LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. RWG5 is a "person" within the meaning of Va. Code § 10.1-1400.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
9. "Permit" means Solid Waste Permit (SWP) No. SWP544, which was issued under the Virginia Waste Management Act and the Regulations to Lunenburg County on November 20, 1992. RWG5 LLC purchased the Lunenburg County sanitary landfill permitted under Permit No. SWP544 and assumed the daily operations of the Facility on February 25, 2013.
10. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. On November 20, 1992, Lunenburg County was granted a permit to operate a sanitary landfill by Virginia Department of Waste Management, predecessor-in-interest to the DEQ.
2. The Facility has been operated as a sanitary landfill since the Permit was issued. Operations at the Facility are subject to the Virginia Waste Management Act, the Regulations, and the Permit.
3. RWG5 purchased the Lunenburg County sanitary landfill permitted under the Permit and assumed the daily operations of the Facility on February 25, 2013.
4. On January 28, 2015, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act, the Regulations and the Permit.

Based on the inspection and follow-up information, Department staff made the following observations:

- a. The tipper used for off-loading trailers was sitting in a U-shaped depression and had waste, two lifts high, built up around it on three sides. No cover was applied in this area. Daily cover had not been applied on the upper lift of the southern slope of the landfill (paralleling the wetlands area) and exposed waste was observed.
 - b. RWG5 staff stated that the Caterpillar ("Cat") mid-sized dozer, used for managing waste material, was out of service for two weeks awaiting repairs. RWG5 staff stated that the breakdown and wet weather slowed cover activities.
5. 9 VAC 20-81-140(B)(1)(c) requires that daily cover or an approved alternative daily cover to be applied at the end of each operations day or more frequently if conditions warrant. Furthermore, a minimum three-day stockpile of acceptable cover material is to be maintained at the working face and additional cover material is to be readily available.
 6. 9 VAC 20-81-140(A)(15) requires that adequate numbers and types of properly maintained equipment shall be available to a landfill operation. Provision shall be made for substitute equipment to be available or alternate means implemented to achieve compliance with subdivision B1, C1, or D1 of this section, as applicable, within 24 hours, should the former become inoperable or unavailable.
 7. On February 5, 2015, based on the inspection, the Department issued Notice of Violation No. NOV-15-02-BRRO-001 to Container First Services, the parent company of RWG5 LLC for the violations described in paragraphs C(4) through C(6), above.
 8. On February 27, 2015, Department staff met with representatives of RWG5 to discuss the violations.
 9. As a follow-up to the meeting, RWG5 submitted a detailed report of the staffing and operating equipment at the Facility as well as receipts documenting rental equipment used in January and February 2015 when on-site equipment became inoperable.
 10. Based on the results of the January 28, 2015 inspection and the February 27, 2015 meeting, the Board concludes that RWG5 has violated 9 VAC 20-81-140(B)(1)(c) and 9 VAC 20-81-140(A)(15) , as described in paragraphs C(4) through C(6), above.
 11. RWG5 has submitted documentation that verifies and DEQ staff inspected the Facility on January 9, 2014 and verified that the violations described in paragraphs C(4) through C(6), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders RWG5, and RWG5 agrees to pay a civil charge of **\$15,000** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

RWG5 shall include its Federal Employer Identification Number (FEIN) 45-5489099 with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, RWG5 shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of RWG5 for good cause shown by RWG5, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. NOV-13-12-BRRO-005 dated December 18, 2013. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, RWG5 admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. RWG5 consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. RWG5 declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by RWG5 to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. RWG5 shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. RWG5 shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. RWG5 shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and RWG5. Nevertheless, RWG5 agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after RWG5 has completed all of the requirements of the Order;

- b. RWG5 petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to RWG5.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve RWG5 from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by RWG5 and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of RWG5 certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind RWG5 to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of RWG5.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, RWG5 LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 22nd day of July, 2015.

Robert J. Weld, Regional Director
Department of Environmental Quality

RWG5 LLC voluntarily agrees to the issuance of this Order.

Date: 6/10/15 By: [Signature], President

Rob Guidry
RWG5 LLC

Commonwealth of Virginia

City/County of Chesterfield

The foregoing document was signed and acknowledged before me this 10 day of June, 2015, by Rob Guidry who is President of RWG5 LLC, on behalf of the company.

Notary Public

7389191

Registration No.

My commission expires: 8-31-2015

Notary seal:

